

The Retailers' Occupation Tax Act does not impose a tax on electricity because it is not "tangible personal property". Electricity used in relation to cell phone towers is not exempt from the Electricity Excise Tax. (This is a GIL.)

April 13, 2004

Dear Xxxxx:

This letter is in response to your letter dated July 8, 2003 in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Please be advised that our company has contracted with AAA to conduct an audit of their utility bills and related charges. An authorization letter is enclosed.

AAA is a telecommunications company. Many of their facilities are retail locations and cell tower sites. Our company has its primary location in STATE. We are familiar with the tax laws of this state and are aware of the sales tax exemptions that are provided to telecommunications companies. The electricity that is used at the cell tower sites is exempt from sales tax.

The exemption in STATE is defined as follows:

'Tangible personal property (including electricity) for use or consumption directly and predominantly in, or to upgrade, the receiving, initiating, amplifying, processing, transmitting, retransmitting, switching or monitoring of switching of telecommunications services for sale.'

We are writing to inquire about similar exemptions provided in your state. Do you offer similar exemptions for the electricity used at the cell tower site when that electricity is used as stated above?

Thank you for your consideration and response. For your convenience I have enclosed a return envelop.

Department's Response:

The exemptions from sales tax in Illinois are primarily listed in Section 2-5 of the Retailers' Occupation Tax Act (35 ILCS 120/2-5). Illinois does not have a sales tax exemption for items of tangible personal property that are purchased or used in relation to cell towers. Illinois does not impose sales tax (Retailers' Occupation Tax) on electricity. Electricity is not considered to be "tangible personal property" under the Retailers' Occupation Tax Act.

The Electricity Excise Tax Law (35 ILCS 640/1 et seq.) imposes a tax upon the privilege of using in this State electricity purchased for use or consumption and not for resale, other than by municipal corporations owning and operating a local transportation system for public service. Section 2-4(c) of this Law states in part: "[t]he tax imposed by this Section 2-4 is not imposed with respect to any use of electricity by business enterprises certified under Section 9-222.1 or 9-222.1A of the Public Utilities Act, as amended, to the extent of such exemption and during the time specified by the Department of Commerce and [Economic Opportunity]; or with respect to any transaction in interstate commerce, or otherwise, to the extent to which such transaction may not, under the Constitution and statutes of the United States, be made the subject of taxation by this State." There is no exemption in the Electricity Excise Tax Law for the use of electricity in relation to cell towers.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Sincerely,

Samuel J. Moore
Associate Counsel

SJM:msk